UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, New York, N.Y.

v. 20 Cr. 110 (LJL)

LAWRENCE RAY,

Defendant.

----------x Teleconference

May 29, 2020
12:05 p.m.

Before:

HON. LEWIS J. LIMAN,

District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
BY: DANIELLE R. SASSOON
MARY ELIZABETH BRACEWELL
LINDSEY KEENAN
Assistant United States Attorneys

FEDERAL DEFENDERS OF NEW YORK
Attorneys for Defendant
BY: MARNE L. LENOX
PEGGY CROSS-GOLDENBERG

ALSO PRESENT:

SPECIAL AGENT KELLY MAGUIRE, FBI

THE COURT: Good afternoon. This is Judge Liman. Apologies for being late for the call. Earlier AT&T wanted to put me on listen-only mode. I didn't think that was quite appropriate.

Who do I have on for the government? Ms. Sassoon?

MS. SASSOON: Yes. Good afternoon, your Honor. This is Danielle Sassoon for the United States, and I am joined by Mollie Bracewell and Lindsey Keenan for the United States, as well as Special Agent Kelly Maguire of the F.B.I.

THE COURT: Good afternoon.

And who do I have on for the Federal Defenders?

MS. LENOX: Your Honor, good morning. For the Federal Defenders, Marne Lenox, and I am joined by my colleague Peggy Cross-Goldenberg, on behalf of Lawrence Ray.

THE COURT: Good afternoon, Ms. Lenox and Ms. Cross-Goldenberg.

And is Mr. Ray on the phone?

THE DEFENDANT: Yes, your Honor.

THE COURT: Thank you. Good afternoon, Mr. Ray.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: So before we get started and I turn it over to the government to give me an update, I just wanted to confirm on the record that all parties consent to this proceeding taking place by telephone and that they know that I am conducting the proceeding by telephone from outside of the

district.

Ms. Sassoon, do you consent and do you know of any reason why this proceeding can't go forward as I have indicated?

MS. SASSOON: Your Honor, the government consents and does not know of a reason that we cannot proceed in this fashion.

THE COURT: Okay.

And, Ms. Lenox, do you and your client consent?

MS. LENOX: Yes, your Honor.

THE COURT: Mr. Ray, do you consent?

THE DEFENDANT: Yes, your Honor.

THE COURT: Thank you.

So, Ms. Sassoon, let me turn it over to you. I have got the government's -- the letter from the parties but that was on the government's letterhead and submitted by the government of May 22. It would be helpful for me to get an update on where we stand with respect to discovery and any other issues.

MS. SASSOON: Yes, your Honor.

As set forth in the letter, but just to recap since our last conference, we had a massive discovery production, our sixth production, that went out last week that had ten terabytes of data from the premises search as well as all of the scanned documents from the premises search and some other

miscellaneous items. I apologize. I mean to say twelve terabytes of data.

There was an additional two terabytes of data that wouldn't fit on the drive we had from defense counsel. We requested an additional drive. That was provided to us just recently, within the past couple of days, and so now that we received the drive, we are loading that remaining data that is ready to be produced.

In addition --

THE COURT: Ms. Sassoon, how long will it take for the agents to download the remaining two terabytes of data and provide that to Ms. Lenox and defense counsel?

MS. SASSOON: They will get that drive next week. The issue is, we notified them last week of the need for a drive. We didn't get the drive until the middle of this week. Someone from our office then needs to pick it up, provide it to the F.B.I. The people who load the data at the F.B.I. on to these drives are not working five days a week in the office, and so we now have to wait until next week for somebody to be present in the office to load the drive, and then it will be ready and sent out.

THE COURT: Okay.

MS. SASSOON: So that nearly completes discovery. What is left are the phones that I have mentioned at a prior conference, the additional phones seized in the premises

search, not the primary phone belonging to the defendant, but an additional bulk of phones that he had stored in his residence. My understanding of what those phones are, they are primarily phones that he seized from his victims.

And so the process of extracting those phones is still ongoing. We are prepared to produce several of them already. Three phones, the extraction is already complete. One phone has been determined to be not viable for extraction, so that will not be produced. Two phones are currently in the F.B.I.'s brute force process, and what that means is the phones couldn't be readily opened, so they are attached now to an encryption-breaking software, and that process of breaking into the phones could take weeks, it could take months, or we might end up never getting into them in advance of trial and so they won't be produced in that event.

Beyond that, there are four iPods that remain to be extracted, and those extractions will be small, and then there are ten additional phones that still have to be extracted and for which we still don't know. Some of those might not be viable, and some of those might require brute force to enter.

I want to emphasize, first of all, that the size of these phone extractions is very small compared to the discovery that's been produced. My understanding from F.B.I. is that we are talking in gigabytes and not terabytes, and so this will be a small supplemental production on top of what's already been

produced. We will be producing these phones on an ongoing, rolling basis as they are extracted. We are working as quickly as we possibly can under the existing constraints, and the reason why this is taking some time is that it is a product of the speed of the machine, the encryption levels on the phone, and access to the in-office software that's required to do this, again, because there is not a full-time staff currently working at the F.B.I. in this department.

So that's all that remains other than potentially other documents that come in in response to subpoenas that are still outstanding. But beyond that, discovery is complete. And, in addition, we have produced the nonsensitive discovery to --

THE COURT: Let me, before you discuss the nonsensitive discovery, because I am interested in that, let me ask you a question about the cell phones and the iPods.

In the government's letter, the government stated that the extraction took slightly longer than expected, but you indicated that the F.B.I. anticipated completing the extraction of the phones early next week. That was a letter of May 22, last Friday. It's obvious that that was overly optimistic. What has happened between last Friday and today that leads to the revision, just so I understand?

MS. SASSOON: Yes, your Honor.

I think that primarily boils down to just

miscommunication between us, the F.B.I., and within the F.B.I. there are the case agents and then the ones working in the lab on the phones, and we just had a mistaken impression that we could commit to speed, given that some of these phones are taking a very long time to get into, and we were under a mistaken impression that more phones had been completed. And I apologize for that overly optimistic assessment.

THE COURT: Do you have an estimate with respect to all of the -- the remaining devices, except for those that require brute force? I am going to put the brute force to the side, because I understand that that presents special issues. But for the remaining devices, what is your best estimate today?

MS. SASSOON: Yes. The challenge is that there are ten remaining phones, and I don't know which of those ten phones will require the brute-force process. For those that don't, I think it is safe to say that those phones will only take a matter of weeks and not much longer than that. And again, we are applying as much pressure as we possibly can. I know that this is an absolute priority to the F.B.I. The discovery deadline would have been tight to begin with, absent coronavirus, and with the virus obviously created additional hurdles, but we are applying as much pressure as we can to get this done is the best that I can say.

THE COURT: "Weeks" is very general, and I understand

that you --

MS. SASSOON: Right.

THE COURT: -- may not be able to do better than something that is very general, but when you say "weeks," and not "months," are you saying that it is going to be less than two months or is there anything more specific you could give me?

MS. SASSOON: I would be surprised if -- for the phones that don't require brute force, I would be surprised if it took more than two months, and I'm very optimistic that the remaining phones that don't require brute force will take less than two months.

THE COURT: All right. You were going to talk about providing the nonsensitive discovery to the defendant at the MCC. Where do you stand with respect to that?

MS. SASSOON: Yes. So a hard drive that has all of the nonsensitive discovery produced to date across all of the productions has been provided to the prison, and we have also arranged for the defendant to have access to that hard drive as set forth in our letter, even though the law library is not operating right now.

In addition, we sent hard copies of some nonsensitive discovery to the defendant as well.

On top of that, it seems that the prison is developing better systems for videoconferencing with defense counsel and

that we are moving in a positive direction on ability to review discovery, have access to counsel, and discuss strategy. And so all of that is a positive note.

THE COURT: The letter that you sent reflects that the BOP has informed you that defendants are now being given access to 30-minute video conferences with defense counsel, and that that provides some ability to review sensitive discovery until weekly visits resume. This may be a question better directed to Ms. Lenox, but do you have any further information about the ability of the defendant to review the sensitive material with counsel?

MS. SASSOON: Yes, your Honor.

MS. LENOX: Your Honor --

THE COURT: I'll ask you, Ms. Lenox, in a moment, but let me just direct myself to Ms. Sassoon and then -- and I have got one or two more questions for Ms. Sassoon, and then I will turn to the defendant.

MS. SASSOON: So as reflected in the letter -- this is Danielle Sassoon speaking -- it's my understanding in talking to defense counsel and the MCC that there will be no in person legal visits until at least June 30, 2020. Until that happens, the ability to review sensitive discovery is going to be limited to these videoconferences or to regular phone calls discussing the content of that discovery. I'm not aware of any measures beyond that.

THE COURT: And the last question that I have got for you relates to my request that you share with defense counsel what you would anticipate presenting at trial and material that you believe would be exculpatory. I want to confirm that you believe that you have now produced all of the *Brady* material that would be required to be produced except for what might be in the devices to which you have not had access.

MS. SASSOON: Yes. We have produced *Brady* material in two different ways, both in the discovery production and we have also -- and disclosure letters to defense counsel, highlighting a couple of things that were not in discovery, and we have also provided redacted copies of 302 F.B.I. reports that contained information that could be construed as exculpatory. And so the government's position is that we are in compliance with our *Brady* obligation.

THE COURT: Is it correct, Ms. Sassoon, that you have also made a commitment, the way you have put it is, to produce a preliminary exhibit list several weeks in advance of trial. The way I read "several weeks" is as "three," but you will correct me. What is the government's commitment with respect to preliminary exhibit lists?

MS. SASSOON: Yes, your Honor. We are prepared to commit to producing a preliminary exhibit list three weeks in advance of trial subject to being able to supplement that exhibit list as we continue to prepare for trial up until

trial.

THE COURT: Understood.

All right. Let me now turn, Ms. Lenox, to you, to get whatever you want to tell me about the state of the case.

Actually, before I do that, let me ask Ms. Sassoon whether there is anything else that I should be aware of? I'm not going to address right now the question of a trial date -- I will move to that in a moment -- or the indication in your letter that defense counsel does not consider the assurances that you just provided to be adequate. But aside from those, is there anything else I should know about from you in the case?

MS. SASSOON: Yes. I will just add that, in terms of our assurances, we are also in the process of responsiveness review. As I indicated to defense counsel, we completed a responsiveness review of the iCloud accounts, the phone belonging to the defendant, and are nearly complete on the e-mail responsiveness review, and all of that will be produced to defense counsel within the next couple of weeks. We are also undertaking a responsiveness review of the twelve terabytes of data that was extracted, and that is going to take more time but will likely be complete within two to three months.

THE COURT: Can you explain to me -- I have got a guess as to what you mean by a responsiveness review, but I

would rather not guess. What is it, and what are the parameters?

MS. SASSOON: Yes, your Honor.

So the responsiveness review basically means with respect to the search warrants of electronic evidence, the search warrants authorize us, for example, with the iCloud, to receive from the provider the entire iCloud account over a particular time period. But when we extract an electronic device, it makes a forensic image of the entire phone. But we are only permitted to then keep and use for trial the data that's actually responsive to the specified list of the search warrant of the things that we can seize from these devices and keep, and that's generally what constitutes evidence of the subject offenses or evidence that indicates that a phone or an account belongs to the defendant, and so we are limited to keep doing a responsiveness review that allows us to keep the particular items that the search warrant authorizes us to keep. And so this narrows down the universe of e-mails or the universe of material from the iCloud from the entire account.

And with respect to the defendant's accounts, we produced to him, as an initial matter, the entirety of his own account. We will now be producing to him this more limited universe of what we deem responsive to the search warrant.

With respect to the iCloud account, that does narrow it down significantly to videos and photographs that we think

are potential evidence for the trial and that is evidence of the subject offenses.

I wanted to be clear with the court that with the e-mails, for example, it is still going to be a very large universe of material. So the responsiveness review is not going to result in a set of 200 e-mails for the defense to review in preparation for trial. It is still going to involve thousands of e-mails because, in the government's view, for example, any e-mail sent between the defendant and one of his victims is responsive because some of those e-mails are extremely salient and might actually be exhibits at trial, and some of them are proof of association or the relationship or the history of the relationship, and even if we might not use every one of them at trial, they are still proof of the subject offenses and subject to seizure under the search warrants.

So I just didn't want the court to have a misimpression of the responsiveness review substantially narrowing down the e-mails to a very small universe that are easily digestible for the defense counsel. It is still going to be a large volume of documents that they obviously are capable of searching in the same way that we are capable of searching.

THE COURT: And can you give me the time table again with respect to the responsiveness review? You mentioned it,

but I want to make sure I get it right.

MS. SASSOON: For the e-mails, the iCloud, and his primary phone that's going to be produced, if we get the necessary hard drives, within the next few weeks.

With respect to the twelve terabytes of data, given that that was only recently extracted and we only recently gained access to it and we have been focused on producing all of the discovery, that responsiveness review is going to take more time, and I would estimate that that's going to take about three months.

THE COURT: Thank you.

All right, Ms. Lenox, I will now hear from you with respect to the status of the case and the status of discovery and anything else that I should address or be aware of.

MS. LENOX: Thank you, your Honor. So I want to begin by -- this is Marne Lenox.

I want to begin by discussing the government's proposal that the sensitive material in this case can be reviewed effectively with Mr. Ray over videoconferencing capability at the MCC. We have, over the past several weeks, engaged in videoconferences with Mr. Ray that last approximately a half an hour each time. We are able to do this about once a week.

Ms. Cross-Goldenberg has been present for all of these videoconferences, so I'm going to let her talk more to

the concern about and the reality of sharing sensitive discovery material effectively using the videoconference technology.

So I will do that now, and then I will come back to speak to the rest.

THE COURT: Ms. Cross-Goldenberg.

MS. CROSS-GOLDENBERG: Thank you, your Honor. This is Peggy Cross-Goldenberg.

So the way that the process works -- I'm not sure how much familiarity your Honor has with this, but we have to put in requests several days in advance to request any kind of audio or video call with our clients. The unit that Mr. Ray is on, there happens to be a particularly high demand, I think because many people have been ill and have special needs and so a great need to be speaking with their counsel. We can't pick the exact day or the exact time, and in fact we can't be told in advance exactly what time the call will happen, although we find out the night before what day the call will be. So the time range is supposed to be from 1:00 to 3:30 in the afternoon, although calls sometimes come in early or late.

As you can imagine, that makes it very hard to sort of block out the time and plan ahead of time. I have put in -- I think on the 27th I put in a request for a call for next week, but essentially that means trying to leave open every day from 1 to 3:30, hoping that a call will be scheduled.

Mr. Ray is brought to a pretty large and echoey room at the MCC and sits in front of the computer for the videoconference. It is, as I said, very echoey. The court can recall when we tried to do the last conference in the case via video how hard it was between the, you know, just the echos and the feedback and all that. It is very hard to communicate.

Mr. Ray doesn't have control of the computer, so he can't, for example, mute the volume, right? So if I'm -- if I were to play him an audio recording, for example, the feedback loop in terms of the volume picking up again on his end, it makes it extremely difficult.

You know, many of the audio recordings and video recordings that we have been able to review so far exceeds the 30-minute time block in length. So even if we get the call right on time and jump right in, a call, an entire week's worth of contact with Mr. Ray could be limited to just reviewing one partial audio recording. And that's not to mention any time that we need to discuss with him his health concerns or our investigative efforts or anything else happening in the case or on our end. So it is a huge challenge. It is, I think, impossible to overstate how big of a challenge it is.

You know, the video is much better than audio, obviously, in terms of having to review things, but the -- as of now, there isn't a way for us to share our screen the way that there is when you are doing, for example, a zoom or a

Skype conversation. So I couldn't pull up on my computer, for example, a sensitive document and have us both review it. I would have to have a hard copy of the document and hold it up to my computer's camera, which, you know, I think if you can imagine doing that, would make it very hard for the -- not only for the person on the other end to read it on their computer screen, especially when they can't control, like, you know, the size of the image or anything like that, but also just hard to just sort of review the words on the page together. So it is a challenge.

We have been very diligent in terms of requesting a call every week. We haven't always gotten them, and we are doing our best, but the system is -- it is better than nothing, but it is far from effective.

THE COURT: What is the volume of recorded calls or audiotapes that you have had to listen to? There is not a wiretap in this case, right?

MS. SASSOON: Your Honor, this is Danielle Sassoon. I can explain the nature of the audio and video evidence.

The defendant made a number of lengthy recordings of his interrogation sessions or of his victims giving false confessions, and so there are a lot of those in his e-mail and also in his iCloud and in the iClouds of other people.

One thing I can add on this point is that now that discovery has been produced and we are focused on preparing for

a trial, we are going to start transcribing some of these recordings. Now, that's going to take time, and it is not something that's going to be complete in the next few weeks or even months, but we can produce those transcripts to defense counsel on a rolling basis as an aid to their preparation of their defense.

THE COURT: Thank you. That's a very helpful explanation.

Let me turn back to you, Ms. Cross-Goldenberg.

MS. CROSS-GOLDENBERG: If your Honor has --

THE COURT: Was there more that you had to report?

MS. CROSS-GOLDENBERG: No. I think that pretty much summarizes the videoconferencing and our ability to confer with Mr. Ray.

I will just also say, in addition to the time in question, the call often just gets ended without any warning or ability to wrap up, so then necessarily the next call has to sort of loop back to where we were the previous week. So it is just incredibly inefficient.

THE COURT: So I don't know if there is an application now with respect the issues that you have raised or if there is much that I can do about it. I will hear from you.

I will say that I thought Ms. Sassoon's interjection was valuable in that I would assume, from the government's perspective, they would understand the need for the defense to

have time to prepare and that the challenge that you have mentioned is a particular concern obviously for the defendant, but it is a concern that the government, I would assume, has an interest in making sure is addressed in one way or another.

But I will turn it over to you, Ms. Cross-Goldenberg, or you, Ms. Lenox, about whether there is an application. Again, it is very helpful background information.

MS. LENOX: This is Marne Lenox.

Your Honor, we don't have an application at this time, but we do want to make clear to the court and to the government that this presents a tremendous hurdle for Mr. Ray's participation in his defense and for our preparation for trial and for motion practice in this case.

The reality is that even if the government begins to start transcribing some of these recordings, it sounds as though that won't happen for at least a couple of months, and even if and when that does happen, certainly the transcriptions will not be a replacement for the actual video and audio recordings themselves insofar as Mr. Ray will have to review those in order to participate effectively in his own defense.

In addition, the government has indicated that there is still a number of materials outstanding and that its responsiveness review will not substantially narrow the universe of materials with respect to, for instance, the e-mail

communications between the alleged victims and Mr. Ray, which comprise, you know, terabytes worth of data -- literally thousands and thousands of pages -- for review, most of which have been marked sensitive.

So while the government has certainly taken steps to try to ameliorate these challenges, they still very much exist and are very real while Mr. Ray remains incarcerated at the MCC.

The government indicated that last week, on May 21, it sent hard copies of the nonsensitive discovery to Mr. Ray, and it also sent a hard drive of nonsensitive discovery to Mr. Ray the following day, on May 22. I spoke with Mr. Ray briefly before this status conference this morning, and he indicated that he has not yet received any hard copy material nor the hard drive from the government.

So unfortunately we don't have anything to report on how effective it will or will not be for Mr. Ray to review these nonsensitive materials on his own. Certainly the hard copies will be helpful. But to the extent that the hard copies make up only a very small portion of -- the hard copies of nonsensitive discovery make up a very small portion of the total amount of discovery to be reviewed in this case, I think it is extraordinarily difficult to foresee a scenario in which Mr. Ray can effectively participate in his defense even if he is able to review hard drive -- materials on the hard drive,

nonsensitive materials on the hard drive for three hours a week.

As Ms. Cross-Goldenberg alluded to, some of the audio and video that we have reviewed so far from the government's production last far longer than the half-hour videoconference. Some of the audio recordings last even longer than the hour-long session that the government has come to an agreement with the Bureau of Prisons that the Bureau of Prisons would provide Mr. Ray while he is incarcerated to review his discovery materials.

So we just want to be perfectly clear that while we understand and appreciate that the government is making efforts and working with the Bureau of Prisons to allow Mr. Ray to review the discovery in this case, without a more pointed responsiveness review from the government, without a greater narrowing, a more specific narrowing of the truly relevant and salient materials for Mr. Ray's trial, I don't think there is any conceivable way in which, given the current circumstances -- and even not with the current circumstances -- Mr. Ray will be able to review the 15-plus terabytes of discovery that the government has turned over and is continuing to turn over in this case. I think that the government -- the government's representation that it will provide a preliminary exhibit list three weeks in advance of trial does very, very little for the defense in terms of its preparation for this

case.

I also want to note that because of the global pandemic, which is of course in no one's control, the investigation of the defense case has been largely stymied. We can't effectively investigate this case while there is an ongoing pandemic and stay-at-home orders are in effect. We can't speak to witnesses at their homes. We can't go to speak to witnesses at their places of business. We can't go out and speak to other people who may help us communicate better with witnesses in this case.

It is simply not realistic to expect that Mr. Ray while incarcerated and the defense counsel while this pandemic is ongoing, and long afterwards, will be able to effectively review and prepare for Mr. Ray's trial, given all of the constraints that have been imposed on us, and that also includes our ability to meet with Mr. Ray in person and develop a relationship with Mr. Ray, which is necessary, again, to effectively represent him in this case.

Mr. Ray was indicted in early February. Between then and late February, when the MCC went on a lockdown for the search of a gun in the facility for eight days, during that period of time, we were only able to meet with Ray a couple of times in person apart from his appearances in court. We were able to meet with him one time in person between the lockdown that ended at the MCC for the search of the gun and the time

that the lockdown began because of the coronavirus on March 13. So that means that over the past several months we have not been able to engage thoroughly with our clients and develop a relationship that is necessary to effectively represent Mr. Ray going forward.

So these are just some of the myriad hurdles that we have been contending with in preparing for trial in this case.

So while we do not have an application for your Honor at this time, we will likely make an application at some point in the future, depending on what happens once Mr. Ray receives the discovery materials that the government has sent and his ability to review those materials as the government has laid out based upon their agreement with the Bureau of Prisons.

THE COURT: Let me make an inquiry of Ms. Sassoon.

Ms. Sassoon, I'm not going to order you to provide an earlier witness list or to pare back your responsiveness review because, number one, that formal application has not been made to me and, number two, I'm not aware of any law that would give me the authority to do that, but what defense counsel has presented is concerning. I'm sure it is also concerning to you.

And so my question to you is what can you do to help address those issues? Can you been in touch with the MCC, for example, to make sure that the nonconfidential material -- nonsensitive material makes its way to Mr. Ray? Recognizing

that there are rights of victims involved and there is law that gives those victims protection, and I am not asking that anything be done that would undermine the rights of the victims, is there a way to review the material to make sure that what is held back as sensitive is truly sensitive and that there is more material that's deemed nonsensitive? Are there any other things that you can come up with right now that would help address this issue, which is an issue?

MS. SASSOON: Yes, your Honor.

I hope the court and defense counsel can both appreciate that the government is trying to be creative here and is trying to be helpful. I do want to clarify something about that defense counsel said that could potentially be misunderstood.

In terms of the discovery that's been marked nonsensitive, despite the fact that the defendant's e-mail account includes e-mails with victims, we produced as nonsensitive the entirety of his own e-mail accounts, of which there are several, whereas we have marked the e-mail accounts of his victims and associates as sensitive because those are not his own e-mail accounts and contain sensitive material.

So he will have access, once we sort out getting him this hard drive, which I will do after this call, he will have access to his e-mail accounts on this hard drive within the prison which is a substantial portion of the evidence. And so

he will be able to review that even separate and apart from calls with counsel.

Some of the other difficulties that defense counsel highlights -- I don't want to minimize them, but some of those things are a feature of any case, absent a pandemic, that involves this volume of discovery. It is a lot of material to go through. It is a lot to prepare for trial. And that is the nature of these cases.

And there is a possibility that as soon as the end of June they will be able to resume visits and review this material with their clients, and there is certainly a good prospect that they will be able to start doing that well in advance of the trial, which our proposed date is many, many months away still. So some challenges are just by virtue of having a case with a lot of evidence.

With respect to the twelve terabytes of data, we have made a decision to do a more -- to do a narrower responsiveness review. So whereas with the e-mails, like I said, still, it's going to be high volume of e-mails with the twelve terabytes of data. We really are trying to substantially narrow that volume of material in the course of the responsiveness review. I can't represent right now whether we will be able to reduce it from twelve terabytes to one or twelve terabytes to seven because that review is ongoing and I don't have a firm handle on everything that's in that electronic material. But we have

decided to do a narrower responsiveness review in part to make the volume of evidence more manageable for the defense and for us, candidly.

THE COURT: Okay. All right. Thank you.

Let me turn now back to you, Ms. Lenox. Is there anything else that you would like to raise today or that I should address?

MS. LENOX: Yes, your Honor.

I am not making -- well, your Honor, to the extent that Ms. Sassoon has represented that the government is going to narrow its responsiveness review of the premises search material in large part out of concern for the issues raised by defense counsel, I would ask that your Honor order the government to narrow its responsiveness review of the electronic materials in the same manner. I'm not sure what is preventing the government -- if it is able to narrow its responsiveness review of the twelve terabytes from the premises search, I'm not sure why that same narrowing cannot also be applied to the electronic materials that have been provided, which I think would help, at least in part, to alleviate some of the burden of Mr. Ray's review of all of the material.

THE COURT: Do you have authority for the proposition that I can impose that order on the government?

MS. LENOX: I do not offhand have authority for that. I am happy to write on this if your Honor is not inclined to

order the government to do so today, but I would note that on our last -- at our last status conference in April your Honor did order the government to identify for the defense the most significant part of discovery, both what the government would anticipate presenting at trial and material that it believes to be exculpatory.

To the extent that the government has noted that the e-mails between Mr. Ray and his alleged victims are varying degrees of relevance or salience as far as trial evidence goes, I think it would be helpful for the government -- given the order that your Honor made at the last status conference, it would be helpful for the government to identify the specific e-mails within the larger swath of responsive e-mails between Mr. Ray and the alleged victims that it finds particularly salient for trial.

THE COURT: So I'm not going to enter an order today. If you want to make a motion, you can make the motion at any time, and the government will respond to it. I'm not telling you whether you should make the motion or not, but I am telling you that, you know, my inbox is open for a motion any time you think you have got a meritorious motion to make. So --

MS. SASSOON: This is Danielle Sassoon. May I respond, your Honor, briefly?

THE COURT: Sure.

MS. SASSOON: So, first of all, just to clarify the

government's understanding, the government did not come away from the last conference with an understanding that the court had ordered us to do anything beyond a responsiveness review and a production of *Brady* material.

THE COURT: In fact, Ms. Sassoon, I will cut you off. I did not enter an order that went beyond that, and I took Ms. Lenox's characterization of what I said not to be binding on me, and so I did not enter an order to -- that was narrower than what you have just stated.

I did make a request that I thought it would be helpful to move the case along that if, to the extent you identified material that was particularly salient and that you intended to use at trial, that you identify that for the defense, because that is one way of helping to alleviate some of the issues that Ms. Lenox was describing. But that request should not be misconstrued as an order.

MS. SASSOON: Thank you, your Honor. And the government took that to heart, and that is why we are taking the steps we are taking and also has decided to proceed with this narrower review of the twelve terabytes of data. But we are going to be reluctant to do that if, then, these steps, which we don't think are required by law, are then used against us to force us to do things that are similarly not required by law.

The e-mail responsiveness review is nearly complete.

That is done. And we are now moving forward to the twelve terabytes of data. And with respect to both, we are going to do it in a manner that we think is consistent with the law, and I just wanted to put that on the record.

THE COURT: Ms. Sassoon, the only thing that I think I ordered or permitted was for the defense to make a motion any time they thought they had a meritorious motion. I take it you have no quarrel with that.

MS. SASSOON: Yes, your Honor.

THE COURT: I should say, up until the end date for making motions, the motion date that I have set in October. Beyond that, we can figure out some orderly way to do it and I will do that.

Ms. Lenox, anything else that I should address today?

MS. LENOX: I don't believe so, but I'm going to leave it to Ms. Cross-Goldenberg in case there is anything else I have forgotten that she thinks needs to be said.

MS. CROSS-GOLDENBERG: I don't think so, your Honor. This is Peggy Cross-Goldenberg. Thank you.

THE COURT: Okay.

So I have in the letter in front of me the proposal of the parties that trial in this case start on January 19 of 2021, with the trial expected to last approximately three weeks. I will schedule a trial for that date, beginning on that date, and lasting approximately three weeks.

I would note that the letter notes that defense counsel has raised questions about whether, given the current situations with COVID in this state continue, the defense potentially not being able to prepare for trial on that date. I'm going to go ahead and schedule the trial, again, for January 19. But should the health conditions continue and should they make it impossible for the defense to effectively represent their client, I will entertain an application by you, Ms. Lenox or Ms. Cross-Goldenberg. We will address that as circumstances develop. I know these are extraordinary circumstances we have now.

Would it be appropriate -- let me ask Ms. Sassoon in the first instance. I excluded time at our last conference through the motion date. Would it be appropriate for me to exclude time up until January 19, 2021 at this time?

MS. SASSOON: The government would be comfortable with that. Obviously we are covered until the motion date. And once the motions are filed, as long as they are pending, time will be automatically excluded. But excluding it until January 19 spares us from having to make the motion repeatedly. It really depends whether defense counsel will consent to that.

THE COURT: So let me turn now to you, Ms. Lenox. What's your position?

MS. LENOX: I would consent to excluding time until the motions date; and then, when that happens, coming back to

the issue of excluding time until the 2021 trial date.

THE COURT: Okay. So I will not exclude time up until January 19, 2021. I would like to correct what either was a misstatement by me at the last conference or a mistranscription. From my review of the transcript, it reflects that time was excluded to October 29, 2020. I believe that the motion date is October 19, 2020. So my exclusion of time, pursuant to 18 U.S.C. 3161(h)(7)(A), should be to October 19, 2020, and that was to permit the parties to review discovery, to have consultations between themselves, for the defense to be able to consult with their client, and for motions to be prepared and to be made.

Am I right -- let me ask Ms. Sassoon -- that the motion date is October 19?

MS. SASSOON: One moment, your Honor.

(Pause)

MS. SASSOON: That is the date on my calendar for the hearing on the motion.

THE COURT: All right. So that will be what the exclusion is.

It does seem to me that, given the issues with respect to discovery, I should have another conference in this case before motions are filed. We should have conferences on a periodic basis just to make sure that any issues that come up are being addressed. I don't think I need to do it every four

weeks, but maybe every six weeks. Do the parties have a view with respect to that? That would put us at the beginning of July.

MS. LENOX: This is Marne Lenox. That's fine, your Honor.

MS. SASSOON: Yes, your Honor. This is Danielle Sassoon. That's fine to the government. Six to eight weeks from now sounds about right.

THE COURT: Let me just look at the calendar for a moment.

Matt, why don't we look at the week of July 20?

THE DEPUTY CLERK: July 22 at noon?

THE COURT: How does that work for the parties?

MS. SASSOON: That's good for the government.

MS. LENOX: This is Marne Lenox. That's fine for the defense.

THE COURT: Good. All right. So I will speak to you on July 22 at noon. We will calendar that as a call on this calling number. The calling number will be reflected on the docket. If the courthouse becomes more accessible, we may change that to an in-person conference, but I'm not going to make that decision now.

Anything else from the government today?

MS. SASSOON: No. Thank you, your Honor.

THE COURT: Anything else, Ms. Lenox, from you or from

Ms. Cross-Goldenberg?

MS. SASSOON: This is Marne Lenox. No. Thank you, your Honor.

THE COURT: Okay. Thank you all. Try to stay safe and healthy, and we will speak to you in July.

THE DEFENDANT: Thank you, your Honor.

MS. LENOX: Thank you.

MS. CROSS-GOLDENBERG: Thank you, your Honor.

MS. SASSOON: Thank you.

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